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## Appendix E

## Fair Labor Standards Act: Exempt/Nonexempt Classifications

The federal Fair Labor Standards Act (FLSA) establishes standards concerning the minimum wage rate, overtime pay, equal pay, and child labor. Except for those who are specifically excluded from coverage, the law applies to all employees who are:

- engaged in interstate commerce;
- engaged in the production of goods for interstate commerce;
- employed by an enterprise engaged in interstate commerce or in the production of goods for interstate commerce.

Many states also have laws patterned after the FLSA that cover wage and hour issues. Where state and federal law conflict, the more restrictive law usually prevails.

One of the more complex areas of the FLSA is its classification of certain employees as "exempt" or excluded from coverage by the overtime requirements of the law. An employee is presumed to be "nonexempt" (covered by the law and entitled to receive overtime pay) unless the employer can show that the employee's job duties and pay meet certain criteria.

The following tables summarize criteria for some of the most commonly used overtime exemptions. The exemption criteria can be applied easily and correctly to many jobs. However, there are some cases where determining the proper classification can be complicated.

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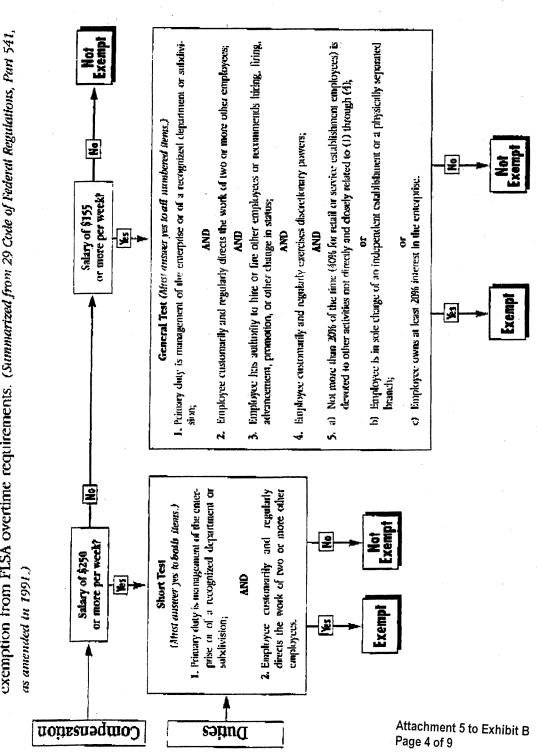
### APPENDIX E - EXEMPT/NONEXEMPT CLASSIFICATIONS

A number of terms contained in the exemption definitions (for example, "salary," "primary duty," "closely and directly related work") have specific meanings when used in the FLSA. These terms are defined in the law and in decisions issued by the Department of Labor. It is important to correctly interpret and apply these terms when determining whether employees should receive overtime pay.

The tables in this appendix provide information to help *Descriptions Now!* users better understand some overtime provisions of the FLSA. They are not meant to provide legal advice. If you have questions on the correct application of the FLSA exemption criteria in your organization, *Descriptions Now!* recommends consulting an attorney or other individual with expense in compensation issues.

## **Executive Employees**

exemption from FLSA overtime requirements. (Summarized from 29 Code of Pederal Regulations, Part 541, Use this chart to determine if an executive employee meets compensation and duties criteria for



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## Administrative Employees

**E.4** 

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Use this chart to determine if an administrative employee meets compensation and duties criteria for exemption from FLSA overtime requirements, (Summarized from 29 Code of Federal Regulations, Part 541, as amended in 1991.)

Salary of \$155

Or more per week?

Wes

₽

Salary of \$250 or more per week?

Compensation

**E** 

General Test (Must answer yes to all numbered items.)

1. a) Primary clury is office or near manual work directly related to management policies general fusiness operations of the employer or employer's customers;

Primary duty is office or non-manual work directly related to management policies or general business operatives of the employer or employer's

J, 33

(Must answer we to both items.)

Short Test

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 Primary duty is performance of functions in administration of a school system or educational insitution in work directly related to academic instruction or training;

2. Employee customarily and regularly exercises discretion and independent judgement;

b) Primary duty is performance of func-

CHSCONCES;

tions in administration of a school sys-

Duties

tem or ectucational lostitution in work directly related to academic tostnic-

lion or training;

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TTO MANAGEMENT

a) Employee regularly and directly assists a proprietor or bona fide executive or administrative annihume.

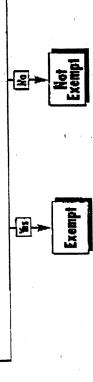
 Inder enly general supervision, employee performs specialized or technical work requiring special training, experience, or knowledge;

of c) Under only general supervision, employeu executes special assignments and tasks;

2. Work requires the exercise of discretion

and independent judgement.

4. Not more than 20% of the time (40% for retail or service establishment employees) is devoted to other activities not directly and closely related to (1) through (3).



In the case of academic administrative personnal, employee receives either salary or fee of \$155 or more per week OR a salary at loast equal to entry satary of teachers in the same school.

Exempt/Nonexempt Classifications

Attachment 5 to Exhibit B Page 5 of 9

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## **Professional Employees**

for exemption from FLSA overtime requirements. (Simmarized from 29 Gode of Federal Regulations, Part Use this chart to determine if a professional employee meets compensation and duties criteria 541, as umended in 1991.)

1. a) Primary duty is work requiring knowledge of an advanced type in a field of science or learning customarity acquired by a prolonged course of specialized intel-Not Exemp b) Primary duly is work that is original and creative in character in a recognized field of anistic endeavor, the result depends primarily on the invention, imagination, or talent c) Primary duty is teaching, tutoring, instructing, or lecturing as a teacher, employed by Primary duty is work that is predominately intellectual and varied in character and the output produced or result accomplished cannot be standardized in relation to a given Not more than 20% of the time is devoted to activities which are not an essential part of and necessarily incident to the work described in (1) through (3). Mnimum sakay requirement dues not apply to an employea, licensed to practice hur or medicina, who is actually practicing in the field; OR who has an academic degree in medicine and is in an interuship or residem program; OR who is employed as a teacher as defined in (10). Primary duly requires the consistent exercise of discretion and judgement General Test (Must answer )es to all numbered items.) a school system or educational establishment or institution; nt more per week? Salary of \$170 <u>.</u> ò ö lectual instruction and suidy; of the employee; period of time; ~\* ന് 4 2 performing work requiring knowledge of an advanced type in a field of science or a) Primary duly requires the consistent exercise of discretion and judgement while learning customarily acquired by a prolonged course of specialized intellectual (Ithst answer yes to at least one tiem.) h) Primary duty requires the consistent exercise of discretion and judgement while teaching, totoring, instructing, or lecturing as a teacher, employed by a school sysc) Primary duty is work requiring invention, inagination, or talent in a recognized tem or educational establishment or insti-Exemple 1 or more per week? Salary of \$250 Short Test field of arristic endeavor. instruction and study; Exemp Compensation Duties Attachment 5 to Exhibit B Page 6 of 9

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# **Employees in Outside Sales**

PLSA overtime requirements. (Summarized from 29 Code of Federal Regulations, Part 541, as amended in Use this chart to determine if an outside sales employee meets criteria for exemption from (1661)

Afust answer yes

1. Is customarily and regularly away from
the employer's place of business,
engaged in making sales or obtaining
orders or contracts,

AND

2. The amount of time spent on activities
not related to (1) is not more than 20% of
hours worked by nonexempt employees
of the same employer.

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# Employees in Computer Systems Analysis and Programming Work

Use this chart to determine if computer systems analysis, computer programmers, software engineers, and other similarly skilled employees meet criteria for exemption from FLSA overtime requirements. (Summarized from 29 Code of Federal Regulations, Part 541, as aniended in 1992.)

(Minst answer yes to both items below.)

Regular rate of pay exceeds 61/1 times the minimum wage and is paid on an hourly basis;

Regular rate of pay is \$155 or more per week and is paid on a salaried basts.

2. Primary duties consist of one or more of the following:

a) Application of systems analysis techniques and procedures, including consulting with users, to determine hardware and software functional specifications;

b) Design of computer systems based on and related to user specifica-

c) Creation or modification of computer programs based on and relatd) Creation or modification of computer programs related to machine ed to system design specifications;

operating systems;

e) A combination of the above duties, provided that the same level of skills is required.

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